

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BECKLEY DIVISION**

**FRANK G. TREADWAY,
JOEY CLARK HATFIELD,
and CHARLES W. HENSLEY,
individually and on behalf of all others
similarly situated,**

Plaintiffs,

v.

**BLUESTONE COAL CORP.,
BLUESTONE INDUSTRIES, INC.,
and MECHEL BLUESTONE, INC.,**

Defendants.

CASE NO. 5:16-cv-12149

COMPLAINT

The Plaintiffs, Frank G. Treadway, Joey Clark Hatfield, and Charles W. Hensley, by and through the undersigned counsel, bring this action arising out of a violation of the Worker Adjustment and Retraining Notification (WARN) Act, 29 U.S.C. Section 2101 *et seq.*

Defendant, Mechel Bluestone, Inc., in conjunction with its affiliates Bluestone Coal Corporation and Bluestone Industries, Inc., failed to provide their full-time employees with the sixty-days notice required under the WARN Act prior to laying off more than fifty of those workers beginning in December 2011 at the large mining operation known as the Burke Mountain Strip Mine near the southern border of Wyoming County, West Virginia.

Plaintiffs bring this action, consistent with Federal Rule of Civil Procedure 23, on their own behalf and on behalf of the Defendants' other similarly-situated employees, for statutory damages, interest, costs, and fees, pursuant to the WARN Act.

Parties

1. Plaintiff, Mr. Frank G. Treadway, was a full-time employee of Mechel Bluestone, Inc. and Bluestone Coal Corporation for two and a half years. Mr. Treadway worked on the day shift for those Defendants at the expansive surface mining site known as the “Burke Mountain Strip Mine,” near the southern border of Wyoming County, West Virginia, at the time that he was laid off without prior written notice on or about March 2, 2012. At all times relevant herein, Mr. Treadway has resided in Fairdale, Raleigh County, West Virginia.

2. Plaintiff, Mr. Joey Clark Hatfield, was a full-time employee of Mechel Bluestone, Inc. and Bluestone Coal Corporation for five years. Mr. Hatfield worked on the midnight shift for those Defendants at the Burke Mountain Strip Mine when he was laid off without prior written notice on or about March 2, 2012. At all times relevant herein, Mr. Hatfield has resided in the area near Hanover, Wyoming County, West Virginia.

3. Plaintiff, Mr. Charles W. Hensley, was a full-time employee of Mechel Bluestone, Inc. and Bluestone Coal Corporation for two and a half years. Mr. Hensley worked on the midnight shift for those Defendants at the Burke Mountain Strip Mine when he was laid off without prior written notice on or about December 28, 2011. At all times relevant herein, Mr. Hensley has resided in Lester, Raleigh County, West Virginia.

4. Bluestone Coal Corporation (hereinafter “Bluestone Coal”) is a West Virginia Corporation, with its mailing address at P.O. Box 2178, Beaver, Raleigh County, West Virginia 25813, and its principal place of business at Glade Springs, 216 Lake Drive, Daniels, Raleigh County, West Virginia 25832.

5. Bluestone Industries, Inc. (hereinafter “Bluestone Industries”) is a West Virginia Corporation, with its mailing address at P.O. Box 2178, Beaver, Raleigh County, West Virginia

25813, and its principal place of business at Glade Springs, 216 Lake Drive, Daniels, Raleigh County, West Virginia 25832.

6. Mechel Bluestone, Inc., (hereinafter “Mechel Bluestone”) is a Delaware corporation, with its mailing address at P.O. Box 2178, Beaver, Raleigh County, West Virginia 25813, and its principal place of business at Glade Springs, 216 Lake Drive, Daniels, Raleigh County, West Virginia 25832.

Facts

7. Prior to December 27, 2011, Bluestone Coal, both on its own and jointly with Mechel Bluestone and Bluestone Industries, employed at least approximately 105 employees, including Plaintiffs, excluding part-time employees at the Burke Mountain Strip Mine.

8. During the years 2011 and 2012, the Defendants owned, operated, and controlled several mining facilities that produced and prepared coal in Wyoming and McDowell Counties, West Virginia, including the integrated operations encompassed by the Burke Mountain Strip Mine.

9. Mechel Bluestone owned, controlled, operated, and maintained the Burke Mountain Strip Mine, in coordination with Bluestone Industries, through the subsidiary Bluestone Coal Corporation.

10. The Burke Mountain Strip Mine is located on the ridge known as Burke Mountain that generally runs for several miles in a southerly direction originating from the headwaters of the areas known as Pinnacle Creek and White Oak Creek in Wyoming County.

11. The Burke Mountain Strip Mine constituted a “single site of employment” for purposes of the WARN Act.

12. Several workers, including Mr. Hatfield, maintained detailed daily journals regarding the part of the Burke Mountain Strip Mine at which they worked each day, the equipment that they

operated, and the length of their shifts.

13. All of the employees at the Burke Mountain Strip Mine were engaged in a common operational purpose, under common management, used common equipment, and were under the Defendants' *de facto* and *de jure* management, maintenance, and control. Representatives of each of the three Defendants routinely ordered, directed, and/or controlled the Plaintiffs and other workers throughout the Burke Mountain Strip Mine on a daily basis.

14. At all times relevant to this action, the Defendants' mining facilities in Wyoming and McDowell Counties were under the Defendants' *de jure* and *de facto* ownership and control as an employer and a mine operator.

15. Upon information and belief, employees of Defendant Bluestone Industries directed the workforce at the Burke Mountain Strip Mine and participated in implementing the layoff that forms the basis of the instant action.

16. Up until December 28, 2011, there were three shifts of workers at the Burke Mountain Strip Mine—day or first shift from 7:00 a.m. till 3:00 p.m.; evening or second shift from 3:00 p.m. till 11:00 p.m.; and hootowl, midnight, or third shift from 11:00 p.m. until 7:00 a.m.

Defendants ordered and carried out a mass layoff at the Burke Mountain Strip Mine

17. Around the end of the day shift on December 28, 2011, the Defendants' management verbally informed all of their employees at the Burke Mountain Strip Mine—some of them in person, and some of them by telephone—that they were laid off for an indefinite period. At that time, the management told the workers to show up for a meeting at the office known as the Blue Building on Burke Mountain on or about the upcoming Friday, December 30, 2011, in order to pick up their paychecks.

18. One week later, on or about January 3, 2012, Defendants called approximately 40

miners back to work at the Burke Mountain Strip Mine. The other roughly 65 of the Defendants' employees continued to be laid off permanently.

19. For approximately 35 of Defendants' employees on the day shift and/or midnight shifts, December 28, 2011 was their last day of employment at the Burke Mountain Strip Mine. On that day, Mr. Hensley left his job at the mine around 7:00 a.m. for the last time.

20. For approximately 30 of Defendants' employees on the second shift, December 27, 2011 had been their last day of employment at the Burke Mountain Strip Mine because they learned of the layoff before their shift began on December 28, 2011.

21. On or about February 11, 2012, Mr. Hatfield was verbally told by Defendants that approximately 5 more of Defendants' employees at the Burke Mountain Strip Mine were laid off.

22. Mr. Hatfield was informed by management that he had been scheduled for layoff on February 11. However, another miner offered to swap places with Mr. Hatfield because the other miner had already found another job. Thus, Mr. Hatfield was able to continue working at Burke Mountain for a bit longer.

23. On or about March 2, 2012, approximately 30 of Defendants' employees at the Burke Mountain Strip Mine were laid off, including Mr. Hatfield.

24. The layoffs on December 27-28, 2011, February 11, 2012, and March 2, 2012, among other dates known and unknown, each entailed less than the minimum number of employees specified in 29 U.S.C. Sec. 2101(a)(2) or (3) as necessary to constitute a plant closing or mass layoff. Nonetheless, in the aggregate, the number of employees laid off on those dates exceeded that minimum number. Those aforementioned layoff dates all occurred within a period that was equal to or less than 90 days from one another.

25. Neither the Plaintiffs, nor a representative of their collective bargaining unit of the

United Mine Workers of America, received written notice that the employees would be laid off prior to the occurrence of these layoffs in 2011 and 2012.

26. Upon information and belief, the employees laid off by Defendants were not all provided with the graduated days and the holiday pay due to them.

27. Dental and life insurance for the employees laid off by Defendants on the aforementioned dates were terminated less than 60 days following those layoffs.

28. Plaintiffs and all of those subject to the 2011-2012 layoffs at the Burke Mountain Strip Mine were not called back to work for a period lasting over six months.

Count I - Violation of the WARN Act

29 U.S.C. 2104

29. Plaintiffs repeat and re-allege paragraphs 1 through 28 as though fully set forth herein.

30. Defendant Bluestone Coal individually, and all Defendants jointly, constitute employers as defined by 29 U.S.C. § 2101(a)(1), for purposes of the WARN Act, because Bluestone Coal individually and all Defendants jointly are business enterprises that either employed one hundred (100) employees, excluding part-time employees, or employed one hundred or more employees who in the aggregate worked at least 4,000 hours per week (exclusive of hours of overtime).

31. The Plaintiffs are affected employees as defined by 29 U.S.C. § 2101(a)(5), for purposes of the WARN Act, because they are employees who experienced an employment loss as a consequence of a plant closing or mass layoffs ordered by Defendants as stated in 2011-2012.

32. As employers under the WARN Act, Defendants had an obligation pursuant to 29 U.S.C. § 2102 to provide written notice to the affected employees or to a representative of the affected employees at the Burke Mountain Strip Mine at least sixty (60) days prior to the planned plant closing or mass layoffs.

33. Plaintiffs were laid off by Bluestone Coal, and by Defendants jointly, on December 27-28, 2011, and March 2, 2012, as part of four or more groups of employees at the Burke Mountain Strip Mine—a single site of employment—who were laid off on December 27-28, 2011, February 11, 2012, and March 2, 2012, among other dates known and unknown, all falling within a 90-day period encompassing the aforementioned dates.

34. Less than the minimum number of employees specified in 29 U.S.C. Section 2102(a)(2) and (3) were included in the layoffs on December 27-28, 2011, February 11, 2012, and March 2, 2012, among other dates known and unknown within a 90-day period encompassing those aforementioned dates. However, in the aggregate, the number of Defendants' employees laid off in those layoffs exceeds that minimum number. Accordingly, those layoffs taken together constitute a plant closing and/or mass layoff pursuant to 29 U.S.C. 2104(d).

35. Plaintiff Hatfield and Defendants' other aggrieved and affected employees experienced an employment loss because they were separated from work, without cause, for a period exceeding 6 months, as a result of the layoffs on December 27-28, 2011, February 11, 2012, and March 2, 2012, among other dates known and unknown within a 90-day period encompassing all those dates, which constituted a plant closing at the Burke Mountain Strip Mine.

36. Alternatively, the Plaintiffs and Defendants' other aggrieved and affected employees at the Burke Mountain Strip Mine experienced an employment loss as a result of the layoff that was executed on December 27-28, 2011, February 11, 2012, and March 2, 2012, among other dates known and unknown within a 90-day period encompassing those dates, and as a consequence of which the Plaintiffs and Defendants' other affected employees were laid off for a period exceeding 6 months, and which constituted a mass layoff.

37. Defendants failed to provide a written notice to Plaintiffs, or their union

representatives, or to Defendants' other affected employees at the Burke Mountain Strip Mine, prior to closing the plant or carrying out the mass layoff beginning on December 27-28, 2011.

38. As a result of the plant closing or mass layoff carried out on December 27-28, 2011, February 11, 2012, and March 2, 2012, among other dates known and unknown within a 90-day period encompassing all those dates, at least approximately 100 of Defendants' employees, excluding part-time employees, and including Plaintiffs, who collectively comprised more than thirty-three percent (33%) of the employees at the Burke Mountain Strip Mine, experienced an involuntary, continuous, and ongoing employment loss for a period well in excess of six (6) months, which continues to cause them substantial economic and other harm.

Class Allegations

39. Plaintiffs repeat and re-allege paragraphs 1 through 38 as though fully set forth herein.

40. Pursuant to Rule 23(a)-(b), Plaintiffs bring this class action on behalf of the other similarly situated employees (hereinafter "Class Members") who were laid off, as set forth above, at the Burke Mountain Strip Mine.

41. The proposed class would be defined as: All full-time employees who were subject to a reduction in force from full-time employment at the Burke Mountain Strip Mine by the Bluestone Coal Corporation, Bluestone Industries, Inc., or Mechel Bluestone, Inc. from December 27, 2011 through March 26, 2012.

42. The Class Members are so numerous that joinder of all Class Members is impracticable because it is estimated that Defendants laid off at least approximately 100 of their employees in violation of the WARN Act.

43. There are questions of law or fact common to the Class Members that predominate over any questions affecting only individual Class Members. The principal question in this case is

whether the Defendants' failure to provide notice of the 2011-2012 Burke Mountain mass layoffs constituted a violation of the WARN Act.

44. The claims and defenses of the Plaintiffs are typical of the claims or defenses of the Class Members as a whole because the Class Members are similarly affected by Defendants' wrongful conduct in violation of the WARN Act.

45. The Plaintiffs will fairly and adequately protect the interest of the Class Members because Plaintiffs have demonstrated their commitment to this claim by carefully documenting their work history in detail and by preserving their pay stubs, and because Plaintiffs are represented by counsel who are competent and experienced, including experienced in bringing class action litigation under the federal WARN Act involving Mechel Bluestone and its subsidiaries.

46. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because (a) joinder of all Class Members is impracticable, (b) the Class Members are likely unemployed and not in a position to retain counsel, and (c) each individual Class Member has suffered damages that are merely modest. Therefore, there will be no difficulty in the management of this class action and concentration of the claims in this forum will promote judicial economy.

Damages and Relief Requested

47. Pursuant to Rule 23(a), (b), & (c), and 29 U.S.C. § 2104(a)(5), and other applicable law, Plaintiffs request that the Court certify that Plaintiffs and all other similarly-situated workers from Defendants' plant closing or mass layoff, as set forth above, constitute a single class.

48. Plaintiffs request that the Court designate them as class representatives as permitted by 29 U.S.C. § 2104(a)(5).

49. Plaintiffs request that the Court appoint the undersigned attorneys as class counsel.

50. As a result of Defendants' WARN Act violations, Plaintiffs request that the Court order Defendants to pay Plaintiffs and all other Class Members up to the maximum amount of statutory damages, including interest compounded at an appropriate rate and frequency, pursuant to 29 U.S.C. Sections 2104(a)(1) & (2).

51. Plaintiffs request that the Court order Defendants to pay Plaintiffs' reasonable attorneys' fees, litigation expenses, and other costs that Plaintiffs incur in pursuing this action as authorized by 29 U.S.C. § 2104(a)(6).

52. Plaintiffs request that the Court grant them and all other Class Members any such other relief as it may deem just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY FOR ALL ISSUES SO TRIABLE.

Plaintiffs,
**Frank G. Treadway, Joey Clark
Hatfield, and Charles W. Hensley,**
By counsel:

\s\ Samuel B. Petsonk
Samuel B. Petsonk (WVSB # 12418)
Bren J. Pomponio (WVSB # 7774)
Mountain State Justice, Inc.
1031 Quarrier Street, Suite 200
Charleston, West Virginia 25301
(304) 344-3144
Fax: (304) 344-3145
Email: sam@msjlaw.org
bren@msjlaw.org

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Frank Treadway, Joey Clark Hatfield and Charles W. Hensley,
individually and on behalf of all others similarly situated.

(b) County of Residence of First Listed Plaintiff Raleigh county

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Samuel B. Petsonk, Esq.
Mountain State Justice, Inc., 1031 Quarrier Street, Suite 200
Charleston, West Virginia 25301, 304-344-3144

DEFENDANTS

Bluestone Coal Corp., Bluestone Industries, Inc., and Mechel
Bluestone, Inc.

County of Residence of First Listed Defendant Raleigh County

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
WARN Act, 29 U.S.C. Section 2104

Brief description of cause:

Violation of the Worker Adjustment and Retraining Notification

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/14/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Samuel B. Petsonk

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.